

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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JUN 17 1997

In the Matter of

**MOBILEMEDIA CORPORATION, et al.**

Applicant for Authorizations and Licensee  
of Certain Stations in Various Services

Federal Communications Commission  
Office of Secretary

WT DOCKET NO. 97-115

To: The Commission

**WIRELESS TELECOMMUNICATIONS BUREAU'S CONSOLIDATED COMMENTS  
ON THE PETITIONS FOR INTERVENTION OF THE  
SECURED AND UNSECURED CREDITORS**

1. On June 11, 1997, The Chase Manhattan Bank, as agent for the Secured Lenders, and the Official Committee of Unsecured Creditors ( "Petitioners") filed separate petitions to intervene in the instant proceeding. The Presiding Judge subsequently certified Petitioners' motions to the Commission. Order, FCC 97M-104 (released June 16, 1997). The Acting Chief, Wireless Telecommunications Bureau ("Bureau"), by his attorneys, now comments on both petitions.

2. On June 6, 1997, the Commission stayed the instant proceeding for 10 months to permit MobileMedia Corporation *et al.*, debtor-in-possession, to make a showing consistent with the Commission's Second Thursday doctrine. Order, FCC 97-115 (released June 6, 1997) (grant of Company's Motion for Waiver and Application for Review, filed May 13, 1997).

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3. Petitioners state their desire to preserve their rights to participate in both MobileMedia's Second Thursday application and the hearing, if resumed. Petitioners seek intervention as a matter of right pursuant to Section 309(e) of the Communications Act of 1934, as amended, and Section 1.223(a) of the Commission's Rules. 47 U.S.C. § 309(e); 47 C.F.R. § 1.223(a). In support, Petitioners assert that established Commission precedent entitles the creditors of a licensee in bankruptcy to intervene in a qualification hearing as "parties-in-interest". See Image Radio, Inc., 12 R.R.2d 671 (Hearing Examiner 1968), aff'd 13 F.C.C. 2d 59 (Rev. Bd. 1968); Hertz Broadcasting of Birmingham, Inc., 46 FCC 2d 350 (Rev. Bd. 1974). The Secured Lenders, if denied party-in-interest status, alternatively seek discretionary intervention pursuant to Section 1.223(b) of the Commission's Rules, 47 C.F.R. § 1.223(b), based on their role in the bankruptcy proceeding and their "perspective on the facts and the law that is not affected by the allegations of wrongdoing." Secured Lender's motion, p. 4.

4. The Bureau submits that because the Commission stayed the hearing, Petitioners' motions are not ripe and should therefore be held in abeyance until and unless the stay is lifted. Moreover, Petitioners will not be prejudiced by delaying consideration of their motions. Participation in a Second Thursday application does not require formal party status because a Second Thursday showing does not involve the same process concerns as those at stake in a hearing, such as the ability to examine witnesses or conduct discovery. To the extent that the Petitioners are able to proffer relevant information to assist in evaluating a Second Thursday application, they may do so through *amicus curie* briefs, a vehicle already

recognized and accepted by the Commission and the Presiding Judge in this proceeding.<sup>1</sup>

5. Intervention will undoubtedly complicate and prolong the hearing (in the event the Company fails to satisfy Second Thursday and the hearing resumes) by adding numerous parties with divergent interests and their respective counsel who will expect to fully participate in the hearing. Nevertheless, Petitioners appear to have satisfied the requirements for intervention as a matter of right *in the hearing* under Section 1.223(a) of the Commission's Rules, as well as Image Radio, Inc., *supra*, and its progeny. The requests are timely filed by creditors of a bankrupt licensee which is subject to a qualification hearing and accompanied by affidavits outlining the creditors' respective pecuniary and ownership interests which are jeopardized by the outcome of the hearing proceeding. *See also Morton Jerome Victorson*, 10 FCC Rcd. 9499, ¶ 4 (1995); Arizona Mobile Telephone Co., 80 FCC 2d 87 (Rev. Bd. 1980).

6. If the Petitioners' motions for intervention by right are denied, the Secured Lenders' alternative request for discretionary intervention should also be denied. The Commission's Rules require the movant to show how its "participation will assist the Commission in the determination of the issues in question". 47 C.F.R. § 1.223(b). The Secured Lenders have not met that burden through a proffer of a fresh "perspective on the law and facts," even if one accepts the quixotic notion that the creditors' perspective is "not

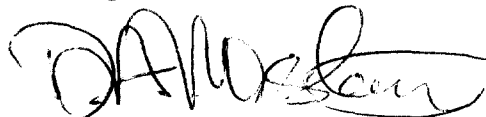
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<sup>1</sup> See e.g., Order, FCC 97-115 (released June 6, 1997) (grant of Company's Motion for Waiver and Application for Review, filed May 13, 1997); Memorandum Opinion and Order, FCC 97M-80 (ALJ, released May 7, 1997).

affected by allegations of wrongdoing." The creditors fail to clearly enunciate what additional benefit their participation in MobileMedia's bankruptcy proceedings will give to the trier of fact in this case. The Secured Lenders have not demonstrated that they possess any knowledge or materials relevant to the issues in question in this proceeding. Hertz Broadcasting of Birmingham, Inc., 46 FCC 2d 350 (Rev. Bd. 1974) (discretionary intervention unwarranted where creditor-movant had no independent, relevant knowledge of designated issues and only interest for intervening was to protect its financial interest). Accordingly, the Bureau submits that the Secured Lenders have not shown that their presence is necessary for a fair and just resolution of the designated issues.

7. For the reasons stated above, the Bureau respectfully requests that the instant motions be held in abeyance until such time as the hearing resumes.

Respectfully submitted,  
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June 17, 1997

## CERTIFICATE OF SERVICE

I, Rosalind Bailey, a secretary in the Enforcement and Consumer Information Division, Wireless Telecommunications Bureau, certify that I have, on this 17th day of June 1997, sent by regular First Class United States mail, copies of the foregoing "Wireless Telecommunications Bureau's Consolidated Comments on the Petitions for Intervention of the Secured and Unsecured Creditors" to:

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